

Comptroller of the Currency, Treasury

§ 23.22

§ 23.11 Lease term.

A CEBA Lease must have an initial term of not less than 90 days. A national bank may acquire property subject to an existing lease with a remaining maturity of less than 90 days if, at its inception, the lease was a conforming lease.

§ 23.12 Transition rule.

(a) *General rule.* A CEBA Lease entered into prior to July 22, 1991, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after July 22, 1991, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Subpart C—Section 24(Seventh) Leases

§ 23.20 General rule.

Pursuant to 12 U.S.C. 24(Seventh) a national bank may invest in tangible or intangible personal property, including vehicles, manufactured homes, machinery, equipment, furniture, patents, copyrights, and other intellectual property, for the purpose of, or in connection with leasing that property, if the related lease is a conforming lease representing a noncancelable obligation of

the lessee (notwithstanding the possible early termination of that lease).

§ 23.21 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimate of the residual value of the property that the bank relies upon to satisfy the requirements of a full-payout lease, for purposes of this subpart:

(1) Must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction; and

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank or the percentage for a particular type of property specified in published OCC guidance.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or other third party may exceed 25 percent of the original cost of the property if the bank determines, and demonstrates by appropriate documentation, that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank.

(c) *Leases to government entities.* A bank's calculations of estimated residual value in connection with leases of personal property to Federal, State, or local governmental entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

[61 FR 66560, Dec. 18, 1996, as amended at 66 FR 34792, July 2, 2001]

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section

24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

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APPENDIX 1 TO PART 24—CD-1—NATIONAL BANK COMMUNITY DEVELOPMENT (PART 24) INVESTMENTS

AUTHORITY: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

SOURCE: 61 FR 49660, Sept. 23, 1996, unless otherwise noted.

§ 24.1 Authority, purpose, and OMB control number.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24(Eleventh), 93a, and 481.

(b) *Purpose.* This part implements 12 U.S.C. 24 (Eleventh). It is the OCC's policy to encourage a national bank to make investments described in § 24.3, consistent with safety and soundness. This part provides the standards and procedures that apply to these investments.

(c) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0194.

(d) A national bank that makes loans or investments that are authorized under both 12 U.S.C. 24 (Eleventh) and other provisions of the Federal banking laws may do so under such other provisions without regard to the provisions of 12 U.S.C. 24 (Eleventh) or this part.

(e) Investments made, or written commitments to make investments made, prior to October 13, 2006, pursuant to 12 U.S.C. 24 (Eleventh) and this part, continue to be subject to the statutes and regulations in effect prior to the enactment of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351).

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70990, Dec. 20, 1999; 68 FR 48775, Aug. 15, 2003; 73 FR 22244, Apr. 24, 2008]

§ 24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized* has the same meaning as adequately capitalized in 12 CFR 6.4.

(b) *Capital and surplus* means:

(1) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(1) of this section, as reported in the bank's Call Report as filed under 12 U.S.C. 161.

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as "qualified investments" under 12 CFR 25.23. The following is a non-exclusive list of examples of the types of entities that may be CEDEs: